

CLAIM OF RIKITARO USHIO

[No. 146-35-487. Decided August 20, 1951]

FINDINGS OF FACT

* * * claimant was married and this claim concerns community property. However, his wife went to Japan on a visit in 1940 and has never returned to the United States since then, although claimant alleges that it is her intention to do so. * * *

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REASONS FOR DECISION

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The claimant's wife is not eligible to claim under the Act, inasmuch as she was never evacuated or excluded from a military area pursuant to orders issued by a military commander. Her "exclusion" from the United States, if it may be called such, was due to the intervention of World War II which prevented her return and is not attributable to action taken as aforesaid as required by the Act.

Since by virtue of the community property laws of the State of California she owns a one-half interest in the property on account of the loss or damage to which this claim is made, the claimant may be reimbursed only to the extent of his interest in the said property or one-half of the total damage or loss incurred. *Fumiyo Kojima, ante*, p. 209; cf. *Ishi Ishizawa, ante*, p. 119; *Masao Ando, ante*, p. 38.

In a memorandum filed by the Japanese-American Citizens League, *amicus curiae*, the position is taken that both the right and proceeds of a claim under the Evacuation Claims Act are community property governed by

the laws of the State of California and hence are not subject to division except as provided by such laws. It is argued that the statements to the contrary in the *Kojima* case, *supra*, are dicta and should not be regarded as binding and that the issue involved herein should be examined *de novo*.

Regardless of whether or not such statements should be regarded as dicta, a careful review thereof in relation to the facts here presented fortifies the conclusion that such statements are correct. The rights conferred by the Evacuation Claims Act did not arise under California law and such rights are not affected in any way by state law except to the extent that the Congress may have adopted such law by reference. Accordingly, where community property was lost and either spouse is ineligible to claim under the Act, the right given an eligible claimant by the Act is personal to him and, at least until the money in satisfaction thereof reaches his hands, is in no way affected by the direct operation of state law. Whether the ineligible spouse thereafter could assert an interest in such payment under the law of the state is a question that it is not herein necessary to answer beyond pointing out that such an assertion could not be based upon any Federal recognition of such an interest in the claim discharged thereby. Cf. *Wissner v. Wissner*, 338 U. S. 655.¹

The further contention of the *amicus curiae* that the wife's loss in this case was a consequence of "the evacuation" loses sight of the fact that the right of claim is given, not for the evacuation or exclusion of others, but only for property losses sustained as a "reasonable and

¹ The further argument to the effect that where the wife is ineligible the husband's statutory right to manage and control community property should cause it to be treated as if it had been his separate property is, in effect, an argument that the law of the state should be disregarded rather than the contrary. Moreover, there would be no "equity" in adopting a rule that would permit husbands to recover in full where wives are ineligible, but which would deprive the wives of any recovery where the husbands are ineligible.

natural consequence of the evacuation or exclusion of *such* person.” [Emphasis supplied.] It is, of course, true that the fact that the evacuation or exclusion of others may have contributed to the loss does not prevent full recovery by a claimant who can establish a causal relationship between his evacuation and the loss sought to be compensated. *Yoshio Bert Shimomaye, ante*, p. 254. Also, certainty that the loss would not have occurred if the claimant had been personally excepted from the operation of exclusion orders is not required. *Kofusa Kashiwagi, ante*, p. 270. However, where there is no reasonable possibility that the personal exception of the claimant in interest (here, the wife) from the exclusion orders would have avoided the loss, there is apparently no basis upon which to hold that the loss was a “reasonable and natural consequence of the evacuation or exclusion of such person” within the meaning of those words as used in Section 1 of the Act. Since, in this case, the wife fails to meet the eligibility requirements of Section 1, there is no occasion to inquire into the requisites outlined in Section 2.